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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.134 OF 2006

Maruti Devesthan Trust Petitioner
versus
Mahesh Zagade and others Respondents

Mr.Haridas and Mr.P.N.Joshi for petitioner.
Mr.D.A.Patil for respondents 1 to 3.

CORAM : A.S.OKA, J.

DATE : 27th April 2007

PC :

1. Heard learned advocates appearing for the parties. The petitioner has alleged that the first and second respondents have committed a wilful and deliberate breach of the order dated 17th March 2005 passed by a Division Bench of this Court in Writ Petition No.626 of 2005. The breach alleged is of the following part of the order :-

> "3. In the aforesaid facts and circumstances, we direct Respondent No.2, Collector, Nashik - to decide the said application for enhancement of compensation under Section 28-A of the Act as expeditiously as possible,

> preferably within four months from the date of receipt of this order. While doing so, the second respondent shall take into account the decision of the Supreme Court in the case of Union of India & Ors. V/s. Mangatu Ram, reported in AIR 1997 SC 704."

2. It is contended that the second respondent was directed to decide an application under section 28A of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act of 1894) in accordance with the decision of the Apex Court in case of Union of India and others versus Mangatu Ram (AIR-1997-SC-704). It is submitted that the second respondent made an award granting ridiculously low market value. It is submitted that no reasons have been given for granting ridiculously low amount. It is also submitted that in a reference made by the petitioner under section 28A(3) of the said Act of 1894, the award made by the second respondent has been corrected and a substantial enhancement in market value has been granted by the District Court. It is submitted that when a Division Bench of this Court directed the second respondent to decide the application under section 28A of the said Act of 1894 in accordance with law, the second respondent was under an obligation to decide the said application in accordance with law and to

award just and reasonable compensation. It is submitted that when the petitioner had made out a case for grant of a substantial enhancement, the second respondent has granted only a marginal enhancement by 10% of the initial amount awarded. It is submitted that it is obvious that the second respondent has not decided the application in accordance with law as per the directions of the Division Bench and therefore, there is a wilful breach of the order passed by this Court.

3. I have considered the submissions of the learned counsel appearing for the petitioner. I have also perused the reply filed by the first respondent Collector.

4. Section 28A of the said Act of 1894 reads thus :-

> "28A. Re-determination of the amount of compensation on the basis of the award of the Court.-
>
> (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an

application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court.

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interestedand giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18."

5. As per the said section, the Collector is required to redetermine the compensation payable to a claimant on the basis of an award made by the Court in respect of a land which is acquired by the same notification under section 4 of the said Act of 1894. By no stretch of imagination the section contemplates that the Collector is under an obligation to award the same amount or

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to fix the same rate as fixed by the Court in its award on the basis of which an application is made under section 28A of the said Act of 1894. It is true that the Division Bench directed the second respondent to decide the application in the light of the law laid by the Apex Court in the case of Union of India versus Mangatu Ram (supra). The said judgment of the Apex Court cannot be read as laying down a ratio that while deciding the application under section 28A of the said Act of 1894, the Collector has to mechanically award the compensation at the same rate at which the compensation has been awarded by the Court in an award on the basis of which the application under section 28A of the said Act of 1894 has been filed. The law contemplates that a redetermination has to be made on the basis of the award of the Court. On the basis of the award of the Court, market value is to be redetermined after considering various factors viz. location of the land, nature of the land etc..

6. It is true that the Collector cannot ignore the very object of incorporating section 28A of the said Act of 1894. The redetermination has to be made in a rational manner after considering

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the factors which are required to be considered as per Section 23 of the said Act of 1894. The redetermination cannot be done mechanically.

7. Grant of compensation at a rate which is allegedly very low cannot amount to breach of the order of this Court. Moreover, by no stretch of imagination it can be said that the first and second respondents have committed a wilful breach or disobedience of the order of the Division Bench by awarding market value at a lower rate.

8. Subject to what is stated above, no case is made out for taking an action under the Contempt of Courts Act, 1971. Notice issued to the respondents is discharged. Contempt Petition is disposed of.

(A.S.OKA, J.)